HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No. 10039 of 2007

Between:

M/s Susilpa Builders and Planners
Pvt. Ltd., Banjara Hills,
Hyderabad

… Petitioner

And

Andhra Bank, Ameerpet Branch,
Hyderabad & others

… Respondents

:: O R D E R ::

Counsel for the petitioner : Shri A. Sudershan Reddy

June 5, 2007

Per G.S. Singhvi, CJ

This is the fourth round of litigation by the petitioner, who has so far been unsuccessful in frustrating the action initiated by Andhra Bank (for short, 'the Bank') for recovery of its dues in accordance with the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act').

A perusal of the record shows that Writ Petition No.20338 of 2006 filed by the petitioner for quashing the action initiated by the Bank under Sections 13 and 14 of the Act was dismissed by the learned Single Judge vide her order dated 29.09.2006 on the ground that an effective alternative remedy is available to the petitioner under Section 17 of the Act. Writ Appeal No. 1185 of 2006 filed by the petitioner was dismissed by the Division Bench vide judgment dated 08.12.2006. The Division Bench relied on the judgments of the Supreme Court in **A.V. Venkateshwaran v. R.S. Wadhwani**[1], **Thansingh Nathmal v. Superintendent of Taxes**[2], **Baburam v. Zilla Parishad**[3], **Titaghur Paper Mills Co. Ltd. V. State of Orissa**[4], **Champa Lal v. I.T. Commissioner**[5], **J.M. & Co. v. Agricultural I.T. Officer, Assam**[6], **C.I.T. v. Ramendra Nath Ghosh**[7], **Swadeshi Cotton Mills Co. Ltd., v. Government of U.P.**[8], **Gujarat University v. N.U. Rajguru**[9], **State of H.P. v. Raja Mahendra Pal**[10], **L.L. Sudhakar Reddy v. State of A.P.**[11], **State of Bihar v. Jain Plastics & Chemicals Ltd.,**[12], **Harbanslal Sahnia v. Indian Oil Corporation Ltd.,**[13] and **ABL International Ltd., v. Export Credit Guarantee Corporation of India Ltd.,**[14] and held that the remedy available to the appellant (the writ petitioner herein) by filing an application under Section 17 is an effective alternative remedy and there is no ground for making a departure from the settled rule that the High Court will not entertain petition under Article 226 of the Constitution of India, if an effective alternative remedy is available to the petitioner.

After dismissal of the writ appeal, the petitioner filed S.A.No.47 of 2007 before Debts Recovery Tribunal, Hyderabad (for short, 'the Tribunal') and prayed for quashing the action taken by the Bank under

Section 14 of the Act. It also filed I.A.No. 377 of 2007 for staying the proceedings initiated by the Bank. The Tribunal dismissed the application by recording the following observations:

> "A perusal of paragraph (G) of the main S.A. reveals that the action has been initiated by the 1st respondent under Sec.14 and therefore if Sec. 14(3) is looked into, the granting of interim stay does not appears to be proper, rather bars, moreover after looking into the status of the petitioner as there is an agreement between the 2nd respondent and the 1st respondent but not with the petitioner. The SARFAESI Act is finally held as a constitutional one by the Hon'ble Apex Court. Even Sec. 35 overrides the other laws as per the discussion in the recent ruling in Tanscore vs. Union of India. Thus, in the nut shell, this application is not maintainable as there appears no illegality in following the provisions of Secs. 13 & 14 of the SARFAESI Act by the Respondent Bank."

Shri A. Sudershan Reddy, learned counsel for the petitioner made efforts to persuade us to entertain the writ petition despite the availability of an effective alternative remedy of appeal to his client under Section 18 of the Act, by arguing that his client has been subjected to arbitrary treatment by the Bank, but we have not felt impressed. In our opinion, order dated 29.09.2006 passed by the learned Single Judge in Writ Petition No.20338 of 2006 and the judgment of the Division Bench in Writ Appeal No. 1185 of 2006 are conclusive on the issue of availability of alternative remedy to the petitioner and its efficacy. Therefore, there is no justification for entertaining the writ petition by ignoring the fact that statutory remedy of appeal is available to the petitioner under Section 18(1) of the Act.

With the above observation, the writ petition is dismissed leaving the petitioner free to avail remedy under Section 18(1) of the Act.

As a sequel to dismissal of the writ petition, W.P.M.P. No. 12731 of 2007 filed by the petitioner for interim relief is also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

05.06.2007
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[1] AIR 1961 SC 1506
[2] AIR 1964 SC 1419
[3] AIR 1969 SC 556
[4] (1983) 2 SCC 433
[5] AIR 1970 SC 645
[6] AIR 1970 SC 1980
[7] (1972) 4 SCC 379
[8] (1975) 4 SCC 378
[9] AIR 1988 SC 66
[10] (1999) 4 SCC 43
[11] (2001) 6 SCC 634
[12] (2002) 1 SCC 216
[13] (2003) 2 SCC 107
[14] (2004) 3 SCC 553